IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Bail Appl..No. 6396 of 2007()

CRIME NO.570/2007 OF THRISSUR EAST POLICE STATION

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PETITIONER : ACCUSED

M.NAJEEB, S/O.BEERAN KOYA,
AGED 50 YEARS, RESIDING AT HOUSE NO.33/3347-A1,
THOTTILPEEDIKA, CHEVARAMBALAM P.O., CALICUT.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS: COMPLAINANT

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1. CIRCLE INSPECTOR OF POLICE, MEDICAL COLLEGE POLICE STATION, P.O.MEDICAL COLLEGE, KOZHIKODE.

2. CIRCLE INSPECTOR OF POLICE, CHEVAYOOR POLICE STATION, P.O.MARIKUNNU, KOZHIKODE.

3. CIRCLE INSPECTOR OF POLICE, THRISSUR EAST POLICE STATION, THRISSUR.

4. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6396 of 2007

Dated this the 23rd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. Altogether there are 3 accused persons. The crime is registered under the provisions of the Explosives Act. The crime was registered as early as on 6.9.07. No accused is named in the F.I.R.

2. The crime is registered consequent to detection of abandoned explosives - detonators at the Sakthan Thampuran bus stand at Trichur. 10,000 detonators in a carry bag were found abandoned at the said bus stand. Efforts were undertaken by the police to trace the person who had left the detonators at the bus stand. Investigation led the police to the 2nd accused who deals with such detonators. He gave the information that a person by name Ashraf had come to the 2nd accused and had collected a large quantity of detonators on the day in question. He was not able to give further details of the said Ashraf. Investigation revealed that one person had engaged a taxi to go after a bus to trace certain articles which were suspected to be accidentally left in the bus. The taxi driver informed the police that such person had given his name as Ashraf and had given some details about himself to the driver in the course of journey

from Trichur to Kozhikode. He was not left by the said taxi driver at any particular building. The police reached the scene where he was left and made enquiries.

3. The investigation ultimately led to the petitioner. The petitioner is a person aged about 52 years. He has 2 wives. His name was not Ashraf, but Najeeb. The photograph of the petitioner collected from the wives of the petitioner was shown to the driver who confirmed that the petitioner was the person whom he had taken from Trichur to Kozhikode. The 2nd accused informed the police that the 1st accused had conveyed to him on that night that one bag containing detonators was left at the bus stand. It is, in these circumstances, that the police were ultimately able to zero in on the petitioner. The petitioner is absconding. He is not available for arrest. The police have got indications to show that the petitioner was earlier at Sri Lanka and that he had been detained in custody by the police for some period of time for some offences. The police suspect the petitioner's links with the terrorist and the underworld. They want to arrest the petitioner. Attempts made at the house of the wives of the petitioner did not lead to any recovery of contraband articles. Investigation is in progress. The petitioner apprehends imminent arrest.

4. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. He has nothing to do with the 2nd accused or the detonators which were seized. The taxi driver is, it is alleged, obviously making a mistake. In these circumstances, the petitioner may be granted anticipatory bail, it is prayed.

5. The learned Public Prosecutor vehemently opposes the application. Custodial interrogation of the petitioner is necessary to ascertain the links of the petitioner with the underworld and the persons on behalf of whom the petitioner is collecting the detonators. For what purpose it was actually used will also have to be ascertained. Permitting the petitioner to arm himself with an order of anticipatory bail would defeat the interests of a fair, efficient and expeditious investigation. The petitioner may not be granted anticipatory bail now, submits the learned Public Prosecutor .

6. In view of the peculiar nature of the facts and circumstances of the case, the learned Public Prosecutor was requested to place the case diary for my detailed perusal. I have perused the same.

7. Having considered all the relevant circumstances, I find merit in the opposition by the learned Public Prosecutor. I am unable to find any features in this case which can justify or warrant the

invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction. The petitioner must co-operate with the investigator and then seek regular bail in the ordinary course.

8. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-